

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
ANTHONY LEO,)	
)	
Petitioner,)	
)	
v.)	Civil Action No. 04-11006-JLT
)	
COMMONWEALTH OF)	
MASSACHUSETTS,)	
)	
Respondent.)	
_____)	

**MOTION TO DISMISS PETITION FOR
WRIT OF HABEAS CORPUS**

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, the respondent, the Commonwealth of Massachusetts, respectfully submits this motion to dismiss the petition for a writ of habeas corpus filed by the petitioner, Anthony Leo, on the grounds that the petition fails to state a claim upon which relief may be granted. As grounds for this motion, and as is set forth more fully in the accompanying memorandum of law, this petition should be dismissed because the petitioner's claim of excessive bail is currently pending before the Massachusetts Supreme Judicial Court, and therefore the petitioner has not yet exhausted his claim, *i.e.*, he has failed to wait for a ruling from the state's highest court before bringing the claim in federal court.

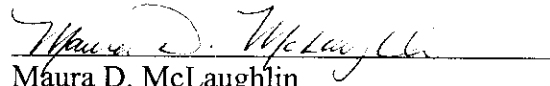
Because the petitioner has not provided the SJC with the first opportunity to pass on the merits of this claim, the petition should be dismissed. 28 U.S.C. § 2254(b)-(c); *Rose v. Lundy*, 455 U.S. 509, 510 (1982). Moreover, the petitioner's claims with respect to alleged violations of his rights of due process and effective assistance of counsel are premature, since the First Circuit has made

it clear that these claims may not be brought in federal court while the proceedings are in the pre-trial phase in state court.¹

WHEREFORE, the respondent respectfully requests that this Court dismiss the petition for writ of habeas corpus.

Respectfully submitted,

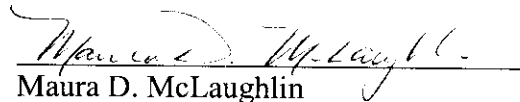
THOMAS F. REILLY
ATTORNEY GENERAL


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Dated: July 20, 2004

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the petitioner, Anthony M. Leo, on July 20, 2004, by depositing the copy in the office depository for collection and delivery by first-class mail, postage pre-paid, as follows: Anthony M. Leo, Old Colony Correctional Center, One Administration Road, Bridgewater, Massachusetts, 02324.


Maura D. McLaughlin

¹ In the event that this Court declines to dismiss the petition on the grounds set forth in this motion and memorandum, the respondent reserves the right, and requests the opportunity, to address the merits of the claims in this petition.